

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.41 of 2006.

Judgment Reserved on 11.10.2006.

Date of Decision 20th October,2006:

Thakur Dass	...Appellant-Accused
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Versus:

State of Himachal Pradesh.	...Respondent.
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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?¹ No.

For the appellants:	Mr.G.R.Palsra, Advocate.
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For Respondent.	Mr.Ashutosh Burathoki, Addl. Advocate General.
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Deepak Gupta, J .

This appeal is directed against the judgment of the learned Sessions Judge, Mandi in Sessions Trial No. 14 of 2004 dated 22.2.2006, whereby he has convicted the appellant of having committed an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (for short ' the Act') and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.50, 000/-. In case of default of payment of fine, the accused is to undergo further imprisonment of one year.

2. The prosecution story in brief is that on 4.1.2004 PW-9 Paras Ram along with PW-3 Jagat Ram , PW-4 Baldev

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Singh and two other constables were on duty near Pandoh Dam . At about 4.10 p.m. a private bus No. HP-34-3222 came from Kullu side and was going towards Mandi. The bus was stopped for routine checking. PW-9 and PW-3 entered the bus and started checking the passengers and their luggage. One Moti Ram (PW-1) was sitting in seat No.46. His luggage as well as Moti Ram was searched but nothing was recovered from him. Next to Moti Ram the appellant was sitting on seat No.47. He became nervous and thereafter the police became suspicious. An option was given to him as to whether he wanted his personal search to be conducted by a Gazetted Officer or by a Magistrate or by the Police. The accused agreed to be searched by the Police and the search was conducted and a cloth belt was found strapped around the waist of the accused beneath his clothes. Inside this belt a packet was found. When the packet was opened it was found to be containing 'Charas'. The recovered 'Charas' was weighed and found to be 800 grams. Two samples of 25 grams each were taken and thereafter the 'Charas' and the samples were sealed with seal impression 'P'. Requisite documentation was done and the N.C.B. Form (Ext. PN) was filled in. The seal was allegedly handed over to Moti Ram. The Investigating Officer prepared the rukka (Ext. PO) and sent the same for registration to Police Station Sadar, Mandi through PW-3 H.C. Jagat Ram. The Station House Officer PW-10 Sh. K.D.Sharma recorded the F.I.R. After completing the entire formalities and investigation, PW-9 lodged the case property with PW-10. Shri K.D.Sharma, Station House Officer

after re-sealing the samples with seal 'T' handed over the case property to Head Constable Baldev Singh (PW-4).

3. On 6.1.2004 the samples along with N.C.B. forms etc. were taken by Constable Pradeep Kumar (PW-6) to C.T.L. Kandaghat. On analysis, the samples were found to be of 'Charas' and challen was filed. The prosecution examined as many as ten witnesses. Thereafter the statement of the accused under Section 313 Cr. P. C. was recorded and in defence the accused examined Kessar Singh, M.H.C, Police Station, Sadar, Mandi. The learned trial Court has convicted and sentenced the accused as aforesaid. Hence, the present appeal.

4. I have heard Shri G.R. Palsra, learned counsel for the appellant-accused and Shri Ashutosh Burathoki, learned Additional Advocate General for the State.

5. The first argument of Shri Palsra is that Section 50 of the 'Act' has not been complied with. According to him, the police officials were only required to give an option to the accused to be searched by the Gazetted Officer or the Magistrate. He has submitted that the police cannot search the accused and therefore by giving an option to the accused that he may be searched by the police Section 50 has been violated.

6. I am not at all in agreement with this contention of Shri Palsra. Under Sections 41 and 42 of the 'Act', an officer is authorized to search a person. Under Section 50 when a personal search is to be conducted then an option has to be given to the accused as to whether he would like to be

searched before the Gazetted Officer or before the Magistrate. This does not imply that the accused cannot give option to be searched by the Police Official himself. It is for the accused to decide whether he wants to be searched by a Gazetted Officer or the Executive Magistrate, or the authorized police officer. In case he gives his option, as in the present case, to be searched by the authorized Police Officer, the fact that he has been searched by the authorized Police Officer does not in any way rendered the search improper or invalid. Even otherwise it is also clear from a bare reading of Section 50, especially Section 50((5), in which it has been clearly held that even if the person to be searched opts to be searched before the Gazetted Officer or the Magistrate then also the Police Officer for reasons to be recorded in writing may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973.

7. The second contention of Mr. Palsra is that there are contradictions in the statements of the witnesses, especially PW-3 and PW-5 . Whereas PW-3 Jagat Ram has stated that the Investigating Officer apprised the accused as to whether he wanted to be searched by himself or before the Gazetted Officer or Magistrate. The Investigating Officer (PW-9) has stated that he gave an option to the accused of being searched before the Investigating Officer or Magistrate. . Consent memo (Ext. PA) clearly shows that the accused in his own hand writing and under his signature has stated that he wanted to be

searched by Head Constable Paras Ram. In this memo an option has been given to the accused whether he wanted to be searched by the Investigating Officer or by Gazetted Officer or by a Magistrate. There is hardly any contradiction in the statements of the aforesaid witnesses and this contention is also rejected.

8. The next contention of Shri Palsra is that both the independent witnesses PW-1 and PW-2 have turned hostile and have not at all supported the case of the prosecution. As far as PW-1 is concerned, he, no doubt, turned hostile and stated that no search of the accused was carried out in his presence. However, when he was cross-examined by the learned Public Prosecutor, he admitted his signatures on the various search and seizure memos. This person is a Teacher by profession and it cannot be believed that he would sign the search and seizure memos if he was not present. His explanation that he had signed the documents as he was in a hurry to leave the place does not hold water, especially in view of the fact that he has clearly and unambiguously stated that he had voluntarily signed the memos without any pressure from any quarter. He has also admitted that he signed the aforesaid documents as some of the proceedings were carried out in his presence. PW-2, no doubt, turned hostile; however he has also admitted his signatures on the various memos. He states that he has signed the documents voluntarily on the asking of the Police. By now the law is well settled that even if the independent witness turn hostile, conviction can be based on the testimony of the police

officials if their testimony inspires confidence. In the present case, the independent witnesses do not deny their signatures on the various documents. They also admitted that the police party had conducted the search. However according to them, the accused was not personally searched in their presence. 800 grams of 'Charas' have been recovered from the accused. All the police officials have given the same version with regard to the recovery and seizure of 'Charas' from the person of the accused. According to them, the said 'Charas' was in a cloth belt which the accused was wearing. There is nothing to show that the police officials are making a false statement in Court. The independent witnesses have also partly supported the prosecution. There is no material on record to show that the police officials were inimical to the accused or they were interested to falsely implicate the accused in the offence. Therefore, in my opinion, the mere fact that the independent witnesses have not totally supported the prosecution is of no consequence.

9. Another contention raised by Shri Palsra is that there is interpolation in the N.C.B. Form. There appears to be some truth in this allegation. The N.C.B. form (Ext. PN) does not tally with the N.C.B. form mark-'x' supplied to the accused. It would be pertinent to mention that column-5 of the N.C.B. Form part-I read as "Date of drawl and dispatch of samples" In this document the dates given are 4.1.2004 and 6.1.2004. In the form mark-'x' the figures 4.1.2004 are missing and only the date of dispatch of sample i.e. 6.1.2004 is given. Mr. Palsra

has raised another contention that in fact even the dates i.e. 6.1.2004 appears to be changed from 5.1.2004 to 6.1.2004. No doubt, that the date of drawal i.e. 4.1.2004 appears to have been added later on. However, this does not affect the merits of the case at all since the date and place of the seizure were given against column No.4 as "4.1.2004, Pandoh Dam Barrier." With regard to the date of dispatch, all the witnesses have stated that summon was handed over to Pradeep Kumar on 6.1.2004 in the morning. The accused did not cross-examine PW-4 Baldev Singh, PW-6 Pradeep Kumar, PW-9 ASI Paras Ram (Investigating Officer) and PW-10 Sh. K.D.Sharma (S.H.O.) in this regard. If they had been cross-examined in this regard, they could have explained the discrepancy, if any, in the document. Even if it be assumed that the date i.e. 4.1.2004 was added later on, this has no material affect on the merit of the case.

10. Keeping in view the aforesaid discussions, I am of the considered opinion that the accused has rightly been convicted by the learned Court below. As far as the quantum of sentence is concerned, I find that the same is just and reasonable.

11. In view of the above discussions, there is no merit in the appeal which is accordingly dismissed.

**(Deepak Gupta),
Judge.**

October 20 ,2006.
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